

REMARKS

In response to the restriction requirement of April 19, 2004, Applicant hereby provisionally elects Invention II including Claims 8 – 17 for examination on the merits without traverse with respect to Invention III (for which Claims 18-22 have been canceled above).

However, Applicant respectfully traverses the Restriction with respect to Invention I as it does not present a serious burden to examine the claims of Inventions I and II together as the claims recite common special technical features, for example:

1. A method for detecting biomolecules *in vivo*, the method comprising:
providing labeled binding molecules *in vivo* to tissue having biomolecules, wherein the labeled binding molecules specifically binds the biomolecules;
emitting a first optical radiation into the tissue *in vivo* to excite the labeled binding molecule bound to the biomolecule *in vivo*; and
detecting, *in vivo*, a second optical radiation emitted by the excited labeled binding molecule in response to the excitation thereof.
8. A circuit for detecting biomolecules *in vivo*, the circuit comprising an optical radiation source configured for *in vivo* use that **emits first optical radiation**;
an **optical radiation detector configured for *in vivo* use that detects second optical radiation emitted by excited labeled binding molecules**; and
a processor circuit, coupled to the optical radiation source and the optical radiation detector, that controls the **emission of the first optical radiation** and that receives an intensity signal associated with the intensity of the **second optical radiation** and transmits a signal associated with the intensity of the second optical radiation to an *ex vivo* system.

Applicant respectfully submits that, given the similarities of the recitations in Claims 1 and 8 included in Inventions I and II respectively, it is not a serious burden to search and examine the application with these claims (with respect to Inventions I & II).¹

Also in support of reconsideration of the Restriction of Invention I, Applicant has added new Claim 23, pursuant to MPEP 806.05(e) (cited in the Restriction in support thereof):

¹ MPEP 803 Restriction – When Proper ...If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

if the apparatus claims include a claim to "means" for practicing the process, the claim is a linking claim and must be examined with the elected invention. If it is ultimately allowed, rejoinder is required.

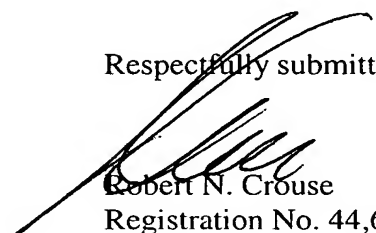
Therefore, as understood by Applicant, at least new Claim 23 must be searched with the Claims included in provisionally elected Invention II, which, Applicant submits obviates any serious burden of examining the Claims of Invention I.

Applicant has also added new Claims 24-28, which recite subject matter included in Invention II. Accordingly, Applicant respectfully requests entry and examination of new Claims 24-28 as included in Invention II.

In summary:

1. Applicant provisionally elects Invention II for examination on the merits and respectfully requests the withdrawal of the restriction with respect to Invention I;
2. Applicant has added new Claims 24-28, which are included in provisionally elected Invention II;
3. Applicant has added new Claim 23, which recites the subject matter of Claim 1 in means plus function format which provides additional bases for the examination of the Claims included in Invention I.

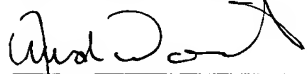
Respectfully submitted,


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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: MS Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313-1450, on May 19, 2004.


Audra Wooten